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SUBJECT: ETHIOPIA: 2010 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN
TRADE BARRIERS

REF: STATE 106353

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¶1. (U) This cable is a response to reftel request for the 2010 National Trade Estimate Report on Foreign Trade Barriers.

TRADE SUMMARY

¶2. (U) The U.S. goods trade surplus with Ethiopia was $147.2 million in 2008, an increase of 89 percent over the surplus of $77.7 million in 2007. U.S. goods exports in 2008 were $299.4 million, up 80 percent from the previous year. Corresponding U.S. imports from Ethiopia were $152.2 million, up 73 percent. U.S. goods exports in the first nine months of 2009 reached $159 million indicating a short fall of $39 million in contrast to $198 million in the same period of 2008. Corresponding U.S. imports from Ethiopia during the same period were $88.4 million in contrast to $128 million in 2008. Ethiopia was the 108th largest export market for U.S. goods during
¶2008.

¶3. (U) The stock of U.S. foreign direct investment in Ethiopia reached $254.7 million as of September 2009, which includes both projects under implementation and operation.

IMPORT POLICIES

¶4. (U) Ethiopia is not a Member of the World Trade Organization (WTO), but has begun the process of acceding to the WTO. It submitted the Memorandum of Foreign Trade Regime to the WTO in December 2006, sent replies to the first round of WTO member questions in January 2008, and held its first Working Party Meeting in May 2008. Ethiopia submitted its replies to a second round of questions generated after its first Working Party in March 2009. In June 2009, Ethiopia submitted a Legislative Action Plan to meet WTO requirements. Additionally, Ethiopia has finalized a number of other WTO Accession documents with U.S. Government support and these documents will be forwarded to the WTO Secretariat upon final approval by the Ethiopian Ministry of Trade and Industry. The Second Working Party Meeting is expected to be held in 2010, pending Ethiopia's confirmation with the WTO. Ethiopia has made modest

progress in drafting new legislation and implementing capacity building measures relevant to accession with the help of technical assistance from a number of donors, including the U.S. Government. Ethiopia is a member of the Common Market for Eastern and Southern Africa (COMESA). Economic relations between the U.S. and Ethiopia are governed by the 1953 Treaty of Amity and Economic Relations.

¶A. Tariffs

¶5. (U) Revenue generation, not protection of local industry, appears to be the primary purpose of Ethiopia's tariffs. High tariffs are applied to protect certain local industries, however, such as the textile and leather industries. Goods imported from COMESA members are granted a 10 percent tariff preference. Ad valorem duties range from 0 percent to 35 percent, with a simple average of 16.8 percent. In February 2007, the government levied a ten percent surtax on selected imported goods, with the proceeds designated for distribution of subsidized wheat in urban areas. In July 2008, the government of Ethiopia introduced an export tariff on raw and semi-processed hides and skins in an effort to shift domestic production to focus more on finished leather, hides and skins, which reap higher world prices.

¶6. (U) The estimated impact of this trade barrier is less than $10 million based on its minimal impact on U.S. exports.

¶B. Foreign Exchange Controls

¶7. (U) Importers are facing increasing difficulty in obtaining foreign exchange, particularly those importing goods or inputs destined for domestic sales. Ethiopia's central bank administers a strict foreign currency control regime and has a monopoly on all foreign currency transactions. The local currency (Birr) is not freely convertible. While larger firms, state-owned enterprises,

and enterprises owned by the ruling party have not typically faced major problems obtaining foreign exchange, less well connected importers, particularly smaller, new-to-market firms, increasingly face burdensome delays in arranging trade related payments. An importer must apply for an import permit and obtain a letter of credit for the total value of the imports before an order can be placed. Even then, import permits are not always granted. Ethiopia currently maintains four requirements and potential restrictions for payments and transfers of international transactions, which include: 1) tax certification requirement for repatriation of dividend and other investment income; 2) regulations covering the repayment of legal external loans and foreign partner credits; 3) rules for issuance of import permits by commercial banks; and 4) a requirement to provide a clearance certificate from the National Bank of Ethiopia (central bank) to obtain import permits.

¶8. (U) The stock of Ethiopia's foreign exchange reserves fell to one month of import coverage in December 2008, but recovered slightly to about 1.8 months by December 2009. International economists expect the foreign exchange crisis to continue for the foreseeable future as Ethiopia continues to rely on donor flows to combat the problem. An acute shortage in Ethiopia's foreign exchange market has stalled overall business in both the private and public sectors. Whereas firms seeking bank letters of credit for imports requiring hard currency previously could acquire those upon demand and with an initial 30 percent deposit, such requests now routinely face waits in excess of three months and require 100 percent of the payments up front. The government's recent tightening of the banking regulations to manage its limited foreign exchange reserves has consequently dampened the supply of desired consumer and industrial imports. The limited supply of foreign exchange in Ethiopia's banks has continued to take a toll on U.S. commercial interests as companies have had increasingly difficulty in importing essential consumer inputs and industrial capital goods from abroad. As a result, some prominent U.S. and other foreign business interests in Ethiopia may be forced to suspend business operations in Ethiopia.

¶9. (U) The estimated impact of this trade barrier is $25 to $100 million based on the amount of U.S. machinery and spare parts that

are exported to Ethiopia.

¶C. Sanitary and Phytosanitary (SPS) Regulations

¶10. (U) On September 9, 2009, the Ethiopian Government enacted Proclamation No. 655/2009, establishing a regulatory framework for biosafety in Ethiopia. The stated objective of the proclamation is to protect biodiversity, as well as human and animal health, from the "adverse effects of modified organisms." This law places a significant regulatory burden on those who seek to import food commodities containing "modified organisms" (MO) and is both more expansive and comprehensive than internationally accepted norms on biosafety outlined in the Cartagena Protocol on Biosafety. For example, it makes no distinction between viable (i.e., able to reproduce in the environment) and non-viable organisms, as outlined in the Cartagena Protocol. As a result, the proclamation may result in a significant barrier to trade in both processed and raw food products, as well as a variety of agricultural products. Corn, soy, and cotton derivative products are among the potentially affected products.

¶11. (U) The biosafety law grants the Ethiopian Environmental Protection Authority (EPA) the power to regulate the making or use of any MOs in "teaching, research, production, import, export, transit, release, contained production, transport, placing on the market, or use as pharmaceutical, as food, as feed, or for processing." According to the law and directives, an Advanced Informed Agreement (AIA) must be obtained before a viable or non-viable MO may enter Ethiopia. The AIA application process includes submission of product characterization information, environmental and human health risk assessments, social and economic impact assessments, and risk management plans. By contrast, the Cartagena Protocol only requires an AIA for living modified organisms intended for direct release into the environment, not for those intended for food, feed, or processing.

¶12. (U) The estimated impact of this trade barrier ranges from $100 to $500 million based on the historical amount of U.S. food exports to Ethiopia.

STANDARDS, TESTING, LABELING, AND CERTIFICATION
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¶13. (U) The Quality and Standards Authority of Ethiopia regulates all exports and imports that are subject to Ethiopian standards. Certification is required for foodstuffs, construction materials, chemicals, textiles, and pharmaceuticals. Outside of the new biosafety legislation affecting food and agricultural products, the standards appear to be consistent with international norms. Pharmaceuticals that have been extensively tested and licensed in other countries are allowed to enter the Ethiopian market without further testing. Industry sources have reported instances in which burdensome regulatory or licensing requirements have prevented the import and/or local sale of products from the United States and other countries, particularly personal hygiene and health care products.

¶14. (U) Ethiopia established a National Codex Committee (NCC) in 2003, which advises the Ethiopian Government on food standard issues. The NCC is a member of the Food and Agricultural Organization of the United Nations (FAO)/World Health Organization (WHO) Coordinating Committee for Africa (CCAFRICA), which participates in Codex (the WTO-recognized body for setting international food safety standards).

¶15. (U) The new biosafety law imposes rigorous examination and burdensome labeling requirements for MO-related food and agricultural products. The EPA must be notified before any MO is transported into Ethiopia and MOs must be declared at points of entry. MO-related products must be labeled, in English and the local language (Amharic), with the words "contains modified organism." Customs officers have the authority to examine, sample, and detain loads if they are thought to contain unauthorized MOs. Transporters must obtain a special license to bring viable MO

products into Ethiopia.
The estimated impact of this trade barrier is included in the SPS regulations section.

GOVERNMENT PROCUREMENT

¶16. (U) A high proportion of Ethiopian import transactions are conducted through government tenders, reflecting the heavy involvement of the government in the overall economy. The tender announcements are usually made public to all interested potential bidders, regardless of the nationality of the supplier or the origin of the products or services. Bureaucratic procedures and delays in the decision-making process sometimes impede foreign participation in tenders. U.S. firms have complained about the abrupt cancellation of some tenders, a perception of favoritism toward Chinese vendors, and a general lack of transparency in the procurement system. Business associations have complained that state-owned and ruling party-owned enterprises have enjoyed de facto advantages over private firms in the government procurement process. Several U.S. firms have complained of pressure to offer vendor financing or other low-cost financing in conjunction with bids. Several significantly large contracts have been signed in recent years between government enterprises and Asian companies without a tender process. Ethiopia is not a Member of the WTO and, therefore, is not a signatory to the WTO Agreement on Government Procurement.

¶17. (U) The estimated impact of this trade barrier is $100 to $500 million based on the number of U.S. company registered complaints of these practices.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

¶18. (U) Ethiopia is a party to the World Intellectual Property

Organization Convention. The Ethiopian Intellectual Property Office (EIPO) is responsible for the administration of patents, trademarks, copyrights, and other intellectual property policy and legal issues. In the past few years, Ethiopia has enacted a series of new laws pertaining to copyright and related rights, plant varieties, and trademarks. In July 2008, EIPO confiscated and destroyed close to half a million pirated copies of locally produced songs and films in Addis Ababa.

¶19. (U)Ethiopia has yet to sign onto a number of major international IPR treaties, such as: the Paris Convention for the Protection of Industrial Property; the WIPO Copyright Treaty; the Berne Convention for the Protection of Literary and Artistic Works; and the Patent Cooperation Treaty. As EIPO has been tasked only to protect Ethiopian copyrighted materials and pirated software, EIPO has taken no action to confiscate or impede the rampant sale of pirated foreign works in-country, arguing that it has no obligation to protect such works which it considers to be outside of its purview.

¶20. (U) Several Ethiopian firms, particularly in the tourism and service industries, operate under the names, or use the symbols, of major international brands. The lack of government registration requirements and enforcement capacity leave the government in a position of only responding to formal IPR challenges brought to Ethiopia's Competition Commission.

¶21. (U) The estimated impact of this trade barrier is $100 to $500 million based on the amount of pirated works sold in Ethiopia and the number of businesses operating illegally under U.S. brand names.

SERVICES BARRIERS

¶A. Telecommunications

¶22. (U) The state-run Ethiopian Telecommunications Corporation (ETC) maintains a monopoly on telecommunications and Internet service and

is closed to private investment. The sector remains underdeveloped and Ethiopia, with an estimated population of over 80 million, has the lowest telecommunications and internet penetration rates in Africa with just 3.1 million mobile phones, 900,000 fixed phone lines and 40,000 internet subscriptions as of March 2009.

¶23. (U) Telecommunications service in Ethiopia is patchy and unreliable at best. While most of Addis Ababa receives mobile phone coverage, attempted calls often fail for broken signals, false errors of recipients being out of the service area, or a lack of network capacity to carry the call. Both coverage and service in most other major towns is unpredictable. To date, the Ethiopian government has not made any special accommodations for the business community to acquire improved telecommunications services to compete in the global market. The government has taken a populist approach in improving the telecommunications sectors by focusing the bulk of its efforts toward broad access for rural areas before it plans more robust and high tech upgrades to help businesses. Chinese companies have received the vast majority of orders from ETC for upgrading its infrastructure.

¶24. (U) An August 2005 directive allows private companies to provide Internet service through the government's infrastructure, but implementing regulations have yet to be promulgated and ETC maintains a de facto monopoly on Internet services. There are no regulations on international data flows or data processing use. In late 2009, Ethiopia released a tender soliciting an international firm to overhaul ETC's management operations.

¶25. (U) The estimated impact of this trade barrier is over $500 million based on the U.S. private sector's capacity to develop the local telecom sector and telecom restrictions on current U.S. businesses operating in Ethiopia.

¶B. Franchising

¶26. (U) Difficulties in product quality control, banking

regulations, and continuing foreign exchange convertibility issues make franchising difficult. Currently, there are no U.S. franchise operations in the country, though two U.S.-flagged hotels operate under United States-linked management contracts.

¶27. (U) The estimated impact of this trade barrier is $100 to $500 million based on the numerous U.S. franchise companies that would consider enter the populous Ethiopian market.

INVESTMENT BARRIERS

¶28. (U) Official and unofficial barriers to foreign investment persist. Investment in telecommunications services and defense industries is permitted only in partnership with the Ethiopian government. The banking, insurance, and micro-credit industries are restricted to domestic investors. Other areas of investment reserved exclusively for Ethiopian nationals include broadcasting, air transport services using aircraft with a seating capacity of up to 20 passengers, and forwarding/shipping agency services. Foreign investors are also barred from investing in a wide range of small retail and wholesale enterprises (e.g., printing, restaurants, and beauty shops).

¶29. (U) According to Ethiopia's 2007 Plan for Accelerated and Sustained Development to End Poverty (PASDEP), it allows for the participation of the private sector in generation of power for sale to the national grid and also allows the private sector to participate in off-grid transmission, distribution, and sale of electricity. In addition, the Minister of Mines and Energy has recently stated that Power Purchasing Agreements (PPAs) and other financing modalities are under consideration. In fact, PPAs and Independent Power Producers (IPPs) are referenced in a draft feed-in tariff bill that appears to open the door for private investors to sell electricity generated by renewable energy sources to the national grid. Ethiopian government officials have asserted in recent meetings with U.S. Government officials, however, that

Ethiopia is interested only in foreign concessional financing for large-scale energy projects.

¶30. (U) The government is privatizing a large number of state-owned enterprises. Most, but not all, of the tenders issued by the Privatization and Public Enterprises Supervising Agency are open to foreign participation. Some investors bidding on these properties have complained about a lack of transparency in the process. Others who have leased land or invested in formerly state-owned businesses subject to privatization have experienced political impediments to assuming full control of acquired firms (e.g., transferring title, delay in evaluating tenders, and tax arrears).

¶31. (U) All land in Ethiopia belongs to the state; there is no private land ownership. Land may be leased from local and regional authorities for up to 99 years. In practice, land has been made readily available by the authorities to foreign investors in manufacturing and agriculture business, but less so for real estate developers. An ongoing border dispute with Sudan has resulted in investors, including foreign investors, who had been granted land usage rights in the area to have their land and all assets forcibly taken by Sudanese authorities without recourse or response from the Ethiopian government.

¶32. (U) Some of these investment barriers are addressed in other sections of this report; however, the estimated impact of this trade barrier is over $500 million primarily due to the potential U.S. investment in the financial sector as well as increased U.S. investment in large scale manufacturing and agricultural operations.

OTHER BARRIERS

¶A. Parastatal and Party-affiliated Companies

¶33. (U) Ethiopian and foreign investors alike complain about patronage networks and de facto preferences shown to businesses

owned by the government or associates of the ruling party in the form of preferential access to bank credit, foreign exchange, land, procurement contracts, import duties, etc.

¶34. (U) Partially overlapping with the Government Procurement section of this report, the estimated impact of this trade barrier is over $500 million based on the difficulty private sector companies face if they do not partner with a state-owned enterprise or ruling party-owned entity.

¶B. Judiciary

¶35. (U) Ethiopia's judicial system remains inadequately staffed and inexperienced, particularly with respect to commercial disputes. While property and contractual rights are recognized, and there are commercial and bankruptcy laws, judges often lack understanding of commercial matters and scheduling of cases often suffer from extended delays. Contractual enforcement remains weak. There is no guarantee that the award of an international arbitral tribunal will be fully accepted and implemented by Ethiopian authorities. Ethiopia has signed, but never ratified, the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The Ministry of Justice and the Federal Ethics and Anti-Corruption Commission (FEACC) are the government entities with primary responsibility to combat corruption. FEACC has arrested many officials, including managers of the Privatization Agency, Ethiopian Revenue and Customs Authority, National Bank of Ethiopia and the state-owned Commercial Bank of Ethiopia, and charged them with corruption. In 2009, FEACC actively arrested officials of private financial institutions in allegedly involved in unlawful business practices and individual businesspersons accused of tax evasion.

¶36. (U) The estimated impact of this trade barrier is $10 to $25 million based on registered complaints made by U.S. firms or individuals.